Supreme Court, U.S.
FILED

No. 05-414 JUL 25 2005

OFFICE OF THE CLERK

In The

Supreme Court Of The United States

ROBERT WILLIAM MOSIMANN

Petitioner

v.

MSAS CARGO INTERNATIONAL and
BETH SCHELLENBERG

Respondents

**On Petition For A Writ Of Certiorari To
Michigan Supreme Court**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Are there mitigating circumstances which might justify the late submission of court materials and the acceptance of such materials by the U.S. courts?

2. In cases where the U.S. government or system of justice itself or its representatives have obstructed due process whether by: negligence, error, providing false information or other lapses; might these situations be considered such mitigating circumstances?

3. In cases where: a gross miscarriage of justice has occurred, or where the U.S. system of justice has itself dishonored commitment(s) or issued unilateral and illegal dictates, or displayed gross and endemic negligence, or where the defendants or defense have engaged in criminal conducts and such circumstances have materially affected the outcome of a case; should such a case be reopened and any settlement agreements be set aside or voided?

4. In cases where, without any notice or proper warning a judge takes an entire proceeding off the record, even though at least one (1) of the parties included was unaware of this and was reliant on commitments made

during this proceeding; if further, considerations were explicitly pledged towards settlement during that proceeding; should the judge be ordered to place such a proceeding back on the record and should a case materially affected by such a situation be reopened and any settlement which ostensibly might have occurred be voided?

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ADDRESSING -

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LIST OF PARTIES

The names of all parties appear in the caption of the case on the cover page.

PREFACE

The Michigan Supreme Court neglected to properly mail the notice of their decision denying my application for leave to appeal.

The Michigan Supreme Court mailed their notice without a full address including postal code; perhaps Canadian alphanumeric codes do not fall within the programming parameters for mailings.

Further, the Michigan Supreme Court neglected to use adequate postage.

As a result of this negligence, this petition to the U.S. Supreme Court is being made without due time for preparation. A list of supplementary materials will follow the enclosed materials as soon as possible to complete the initial presentation for this petition.

STATEMENT OF THE CASE

I, the plaintiff, had a contract to store inventory with the defendants and to have the defendants ship by UPS orders prepared by myself.

Without notice the defendants moved the inventory and interrupted the revenues of my company.

A number of major irregularities occurred in the case, e.g. the judge illegally interrupted my control of my own case. By the time I regained direction of my case, discoveries were no longer available to me. Further, the judge appointed a mediator not only known to the defense attorney but hand-picked by him; this mediator thereupon released confidential information to the defense.

Beyond such incidents the case culminated in two (2) announcements.

Announcement 1 pledged that the inventory would be returned complete and intact and inspected as such by the defense attorney. These considerations were explicitly pledged toward settlement.

Announcement 2 took the case off the roster of going to trial and outlined considerations of settlement of $15,000. U.S. to be paid to myself and noted that a vehicle with contents was lost.

The judge, through imprecism of language and logically invalid reasoning, subsequently issued an illegal dictate and

determination that Announcement 2 constituted all of the terms of the settlement and not only voided the primary considerations of the warranties expressed in Announcement 1, she took the entire proceeding off the record without my knowledge or consent.

The judge, through misconception, simply assumed that the 1.5 million dollar inventory had been inspected and returned. The judge displayed inadvertence in ignoring an explicit statement by myself which clearly indicated that the inventory had not yet been inspected.

The illegal dictate of the judge imposing a non-existent completeness occurred not only when there was no explicit statement which either indicated or implied that the terms and considerations of Announcement 2 were the sole terms and considerations of settlement; but also despite an explicit statement which implied the contrary.

During Announcement 2 when the inventory was brought up the judge not only interrupted my freedom of speech but also made an unequivocal pledge to subsequently bring up this matter. Since the inventory was not brought up again in Announcement 2, it is completely untenable dictating that this announcement was a complete delineation of settlement when the judge had pledged to bring up the primary consideration subsequently. The judge, apparently due to mental incapacity, subsequently simply dishonored this pledge, not even

remembering her own commitment and ruled that Announcement 2 was itself a complete settlement.

After the inventory had been inspected by myself and there was overwhelming evidence that not only the defendants but also the defending lawyer and firm had committed criminal conduct, including fraud, the court simply dismissed a properly filed motion by myself to have the defendants and defense lawyer found in contempt of court due to fraud in not returning the inventory complete nor intact nor even possibly inspected as such.

Further, the court neglected even to properly file its paperwork either with regard to its unilateral dictate of completeness nor with regard to dismissing this motion, neither occurs in the court docket of the case.

The errors of U.S. justice did not end there, however.

After I signed a settlement agreement under both verbal and written protest, I repeatedly inquired about means of appeal.

U.S. government court staff repeatedly provided false information that subsequent to 30 days from the case no appeal was possible. There were at least five (5) such occasions of which at least two (2) occurred in the presence of the court recorder herself as witness.

When I eventually found that the U.S. government had here provided false information, I immediately appealed to the Court of Appeals. They replied that it was not within their purview to consider this case due to the then delay beyond one

(1) year. The delay from U.S. government false information had prevented timely appeal but this mitigating circumstance was beyond the Court of Appeal's ability to take into account.

When the Court of Appeal itself, however, made major errors in mailing, which it acknowledged where these prevented appeal to higher courts, it was able by contrast to remedy these errors and allow such appeal.

The Court of Appeal not only mailed their dated notice 1½ weeks late after starting a 42-day countdown to appeal to the Michigan Supreme Court; they mailed it with both illegible and inadequate postage.

Inconsistently, they were able to allow higher appeal by redressing their own errors in obstructing due process but were themselves unable to redress or take into account such evident obstruction to due process from lower courts.

The Michigan Supreme Court thereupon simply dismissed the appeal as one they were not persuaded to allow.

The Michigan Supreme Court and its clerk's office were clearly aware of the acknowledged mailing errors of the Court of Appeal, however despite this, the Michigan Supreme Court itself mailed their notice both with an incomplete address as well as with inadequate postage.

This initial presentation to the U.S. Supreme Court is thus being made with virtually no notice. Additional supplemental materials will be forthcoming.

At virtually every level the U.S. system of justice has failed in this case. There have been gross and endemic error which have literally not merely permitted but even fostered the criminal conducts of the defense.

REASONS FOR GRANTING THE PETITION

This petition, to have this case reopened, has several significant grounds in its favor:

1. There has been a gross miscarriage of justice in the specific case which should be redressed.
2. There has been blatant disregard and contempt of U.S. law and justice on the part not only of the defendants of this case but also on the part of the defense attorney as well. The criminal conducts of these parties should be brought to justice.
3. There has been gross and endemic error on the part of the U.S. justice at virtually every level of this case. Redress of the specific incidences of error of this case should be accompanied by systemic corrections to promote justice within your society.
4. Useful precedents might be established such as:
    a) In cases where the U.S. government or system of justice itself has obstructed due process of appeal, whether by: negligence, error, false information or other lapses; then appeals should be allowed beyond normal deadlines given such mitigating circumstances.

b) Given gross miscarriage of justice or dishonor or illegal dictates of the U.S. system of justice itself; or given criminal conducts on the part of the defendants or defense then appeals should be allowed beyond normal deadlines.

c) If during an announcement considerations are explicitly pledged toward settlement and there is no explicit statement to the contrary then that announcement should be deemed on the record.

I ask the U.S. Supreme Court not merely to reopen this case but to issue a dictate to Judge Susan Borman placing the entirety of Announcement 1 back on the record and then to initiate criminal proceedings against the defendants and defense attorney Jack Kalmink.

It is one thing for the defendants and defense to have committed a breach of contract and to have stolen property and then engaged in criminal conducts and fraud to evade justice.

It is another for the U.S. system of justice to foster such criminal conduct and unilaterally to have voided my property rights.

Such conduct on the part of the U.S. government, involving: dishonor, providing false information, voiding considerations of settlement without consent and removing

unilaterally crucial matters from the record, I believe make the U.S. government itself deserving of a formal diplomatic protest from my country if this injustice is not remedied.

I apologize for any disorder in this presentation. The lack of time for preparation due to the mailing errors of the Michigan Supreme Court has precluded refinement or correction from more legally fluent sources than myself.

CONCLUDING REMARKS

To paraphrase Plato, Law is not merely enactment. Enactments must be founded upon, some reality promoting the Justice and Good of society in order to become Law.

The high regard for Truth of a system of justice such as that of Cyrus the Great of ancient Persia or the concern with universal dispersion of justice of Alexander the Great are examples of such underlying realities.

Justice is not a matter of flippant persuasion whether or not it should be applied nor of tolerance of falsity and error let alone fraud.

The failures of U.S. enactments and of their proper application I ask the Supreme Court of the United States to remedy.

I ask the Supreme Court to return to the nobility and high-minded ideals of your ancestors and correct the endemic errors and blatant disregard of law in this extreme case of injustice.

CONCLUSION

Robert William Mosimann
submitting this petition to the
U.S. Supreme Court

July 22, 2005

INDEX OF APPENDICES

1. April 26, 2005 Order from the Supreme Court of Michigan
2. April 26, 2005 Envelope displaying Supreme Court of Michigan error in mailing.
3. April 26, 2005 Order from Michigan Court of Appeals

[Other supplementary materials will be forthcoming.]

ORDER

April 26, 2005

127165

ROBERT W. MOSIMANN,

Plaintiff-Appellant,

Versus

MSAS CARGO INTERNATIONAL,
and BETH SCHELLENBERG,

Defendants-Appellees.

Michigan Supreme Court – Lansing, Michigan

Clifford W. Taylor
Chief Justice

Michael F. Cavanaugh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Justices

SC: 127165
COA: 253765
Wayne CC: 01-106152-CB

On order of the Court, the application for leave to appeal the August 27, 2004 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

Dated: April 26, 2005 Signed by: Corbin R. Davis

IN THE MICHIGAN COURT OF APPEALS

ROBERT W. MOSIMANN,

Plaintiff-Appellant,

Versus

MSAS CARGO INTERNATIONAL,
and BETH SCHELLENBERG,

Defendants-Appellees.

ORDER IN THE MICHIGAN COURT OF APPEALS

Re: **Robert W Mosimann v MSAS Cargo International**
Docket No. **253765**
L.C. No. **01-106152-CB**

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10),
orders:

The application for delayed appeal is DISMISSED for lack of jurisdiction because appellant failed to file the application within 12 months of the date of entry for the February 15, 2002 order as required by MCR 7.205(F)(3).

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on
Mar. 29, 2004 Signed by: Sandra Schultz Mengel

Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, Michigan 48909-7552

PRESORTED

UNITED STATES POSTAGE

$ 00.27[8]

APR 26 2005

FROM ZIP CODE 48915

ROBERT MOSIMANN
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WINDSOR ONTARIO

SNGLP00101/2300

No. 05-414

OCT 3 1 2005

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Supreme Court of the United States

ROBERT WILLIAM MOSIMANN,

Petitioner,

v.

MSAS CARGO INTERNATIONAL
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Respondents.

On Petition For A Writ Of Certiorari To The Michigan Court Of Appeals

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether this Court has jurisdiction over a state court action that does not raise a federal question.

2. Whether this Court, like the Michigan Supreme Court, should deny review of the Michigan Court of Appeals order denying Petitioner's untimely application for delayed appeal from the Order of Dismissal to which Petitioner had stipulated.

RULE 29.6 LISTING

Pursuant to Rule 29.6 of the Rules of this Court, Respondent MSAS Cargo International states in 1998, MSAS Cargo International, Inc. merged with MSAS Customs Logistics, Inc. and took that name (MSAS Customs Logistics, Inc.). MSAS Customs Logistics, Inc. changed its name to MSAS Global Logistics, Inc. and then to Excel Global Logistics, Inc. Parent companies, subsidiaries and affiliates of Excel Global Logistics, Inc. are Excel PLC, Excel Investments Ltd., Excel International Holdings Ltd., Realcause Ltd., Kampton, Excel Luxembourg 1 Sarl, Excel Luxembourg 3 Sarl, Vetchlane Ltd., Excel Holdings (USA), Inc., Excel Transportation Services, Inc., Excel Trucking, Inc., Excel Taurus Trucking, Inc., Excel Refrigerated Roadrailer Express, Inc., MNX Carriers, Inc., Orion Express, Inc., Canadian Branch, South Bay Terminals, LLC, Ocean Group Investments Ltd., Mercury Holdings Ltd., Mercury Holdings, Inc., and Mercury Airfreight International, Inc.

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STATUTES

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The Respondents MSAS Cargo International and Beth Schellenberg respectfully request that this Court deny the Petition for Writ of Certiorari, which seeks review of the Order of the Michigan Supreme Court that denied Petitioner's application for delayed appeal to the Michigan Court of Appeals. That Order is reported at 695 N.W.2d 7 (Mich. 2005).

OPINIONS BELOW

On April 26, 2005, the Michigan Supreme Court denied Petitioner's application for leave to appeal from the August 27, 2004 Order of the Michigan Court of Appeals (Pet. App. 1). The Michigan Court of Appeals Order was originally entered on March 29, 2004, and was reissued on August 27, 2004 (Pet. App. 3). That Order dismissed Petitioner's application for delayed appeal "for lack of jurisdiction because Appellant failed to file the Application within 12 months of the date of entry for [sic] the February 15, 2002 Order as required by" the Michigan Court Rules.

JURISDICTION

Petitioner does not state any basis for invoking the jurisdiction of this Court. Respondents respectfully submit that this Court does not have jurisdiction over this matter because it involves only issues of application of Michigan procedural law and does not raise a federal question.

STATUTORY PROVISION INVOLVED

With regard to the jurisdiction of this Court, 28 U.S.C. § 1257 provides, in relevant part, that this Court has jurisdiction over "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had . . . where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity especially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

STATEMENT OF THE CASE

At the outset, Respondents must point out the inaccuracy of Petitioner's many references to "the U.S. courts," "the U.S. government," "the U.S. system of justice," "U.S. law," and "U.S. enactments." This case in no way involves any federal courts or federal law. Rather, Petitioner, who chose not to be represented by counsel, continues to protest about the actions taken by the Michigan court system that resulted from Petitioner's repeated failure to follow the Michigan Court Rules.

Petitioner now seeks to overturn a settlement to which he agreed on the record and under oath in Wayne County Circuit Court, Detroit, Michigan on December 3, 2001, and January 7, 2002.

Petitioner apparently changed his mind about the settlement and filed a "Motion to Find Defendants in

Contempt of Court and Determine Status of Prospective Settlement." Wayne County Circuit Court Judge Susan Borman heard this motion on February 15, 2002, and affirmed that there had been a "full, final, complete settlement on the record." Therefore, Petitioner was bound by that settlement, and a Stipulated Order of Dismissal With Prejudice and Without Costs was entered on February 15, 2002. That same day, Petitioner also signed the Settlement and Mutual Release Agreement and received his settlement check.

About 16 months later, on June 19, 2003, Petitioner filed an "Affidavid [sic] for Leave to Appeal (delayed)" with the Michigan Court of Appeals. On March 29, 2004, the Michigan Court of Appeals dismissed Petitioner's application for delayed appeal for lack of jurisdiction because Petitioner had failed to file the application within twelve months of the date of entry of the Wayne County Circuit Court Order of Dismissal, as required by Michigan Court Rule 7.205(F)(3) (Pet. App. 3).

On August 27, 2004, the Michigan Court of Appeals reissued the March 29, 2004 Order because the Michigan Court of Appeals had affixed insufficient postage for the earlier order to be timely delivered to Petitioner in Canada.

Petitioner then filed paperwork that was accepted by the Michigan Supreme Court as an application for leave to appeal. The Michigan Supreme Court denied that application on April 26, 2005, because the Michigan Supreme Court was "not persuaded that the questions presented should be reviewed by" that court (Pet. App. 1).

REASONS WHY THE PETITION SHOULD BE DENIED

I. This Court Lacks Jurisdiction Because This Petition Does Not Present a Federal Question

Supreme Court Rule 10 outlines three types of cases over which this Court may choose to take jurisdiction: (a) certain decisions of a United States Court of Appeals; (b) a decision of a state court of last resort on an important federal question that conflicts with a decision of another state court of last resort or of a United States Court of Appeals; or (c) a decision by a state court or a United States Court of Appeals on an important question of federal law not yet settled by this Court or in conflict with relevant decisions of this Court. In order for this Court to review on a writ of certiorari any decision by a state court, that decision must be a final judgment rendered by the highest court of the state in which a decision could be had and must involve "an important federal question." 28 U.S.C. § 1257. Thus, in order for this Court to take jurisdiction over a state court case, that case must meet four requirements: 1) the decision to be reviewed must be a "final judgment;" 2) the case must involve a federal question; 3) the federal question must be "important;" and 4) the state court decision must conflict with the decision of another state court or United States Court of Appeals or must involve an unsettled question of federal law or must be in conflict with U.S. Supreme Court decisions.

Under Michigan law, a "final judgment" is defined as "the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties . . . ". Mich. Ct. R. 7.202(6)(a)(i). In this case, the "final judgment" was the Order for Dismissal With Prejudice and Without Costs, entered by the Wayne

County Circuit Court on February 15, 2002. Petitioner had stipulated to entry of this Order for Dismissal. Moreover, Petitioner swore under oath that he understood and agreed to the terms of the settlement that resulted in entry of this Order.

Petitioner also seems to claim that the Michigan Court of Appeals erred in denying his application for delayed appeal. Petitioner had one full year from the date of entry of the Wayne County Circuit Court Order of Dismissal within which to file an application for delayed appeal. Mich. Ct. R. 7.205(F)(3). He did not do so and thereby forfeited his right to apply for leave to appeal. He then was permitted to apply to the Michigan Supreme Court for leave to appeal, even though his paperwork was woefully inadequate.

Through this entire process, Petitioner never once raised a federal question, much less "an important federal question." Moreover, the stipulated Order for Dismissal does not conflict with any decision of any other court. Therefore, because this case does not meet the criteria of either Supreme Court Rule 10 or 28 U.S.C. § 1257, it would be inappropriate for this Court to assume jurisdiction over this matter.

II. The Michigan Courts Properly Denied Petitioner's Attempt to Reverse His Stipulated Dismissal and His Untimely Delayed Appeal

If this Court determines that it lacks jurisdiction, it need not reach the issue of the propriety of the actions of the Michigan Courts. On the other hand, even if this Court has jurisdiction, the Petition should be denied.

Petitioner elected not to be represented by counsel. But an appearance *in pro per* does not excuse a party from application of the court rules. *Bachor v. City of Detroit*, 212 N.W.2d 302, 304 (Mich. 1973). The appellate court rules set forth the time limits within which a party may appeal. Having missed the 21-day deadline for filing an appeal of right pursuant to Mich. Ct. Rule 7.204(A)(1)(a), Petitioner then had one full year within which to file an application for late appeal pursuant to Mich. Ct. Rule 7.205(F)(3). Petitioner also missed that deadline by four months.

When an appeal is not filed timely, the appellate court lacks jurisdiction over the matter. Mich. Ct. Rule 7.203; *Baitinger v. Brisson*, 583 N.W.2d 481 (Mich. Ct. App. 1998), app. den., 591 N.W.2d 32 (Mich. 1999). Because the Michigan Court of Appeals lacked jurisdiction, it correctly declined Petitioner's application for late appeal. Likewise, the Michigan Supreme Court in its sole discretion correctly declined to entertain Petitioner's application for leave to appeal.

CONCLUSION

The Petition should be denied because it raises only state law issues unique to Petitioner and because Petitioner voluntarily agreed to dismiss his case, failed to timely file a claim of appeal and then missed the

twelve-month deadline for applying for discretionary review by four months.

Respectfully submitted,

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